

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KRIS ARTHUR,

Plaintiff,

vs.

BNSF RAILWAY CO.,

Defendants.

)

) No.

)

) **COMPLAINT FOR DAMAGES**

)

) (Jury Trial Demanded)

)

)

)

)

)

INTRODUCTION

1. This is an action under Title I of the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, (“ADA” and “ADAAA”) to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Kris Arthur, who was adversely affected by such practices. Burlington Northern Santa Fe Railway Co. (“defendant” or “BNSF”) discriminated against Kris Arthur because of its perception that she had a disability, when it failed to hire her for a position after offering her a job.

2. This is also an action for discrimination based on plaintiff's sex and her age in violation of Title VII.

JURISDICTION

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

VENUE

4. The employment practices alleged to be unlawful were either committed within the Western District of Washington or the employer maintained a presence and recruited candidates from this district thus the Western District of Washington is the appropriate United States District Court for this matter pursuant to 28 U.S.C. § 1391.

PARTIES

5. Plaintiff Kris Arthur is an adult female citizen of the United States who is over the age of forty. She is a resident of the State of Washington, residing in Port Orchard.

6. Defendant BNSF Railway Co., is a large multi-venued company with a principle place of business in Texas. BNSF operates a railway company which encompasses 32,000 route miles within the United States, delivering coal, agricultural products, consumer products and industrial products. BNSF is and has been a covered entity under Section 102(2) of the Americans with Disabilities Act, 42 U.S.C. section 12111(2). At all relevant times, defendant has continuously been an employer engaged in an industry affecting commerce

1 under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42
2 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42
3 U.S.C. §§ 2000e(g) and (h). Defendant employs thousands of people.

4 **ADMINISTRATIVE PROCEEDINGS**

5 7. Within the statutory time period, specifically on November 14, 2006, plaintiff
6 Kris Arthur filed a charge of discrimination with the Equal Employment Opportunity
7 Commission against defendant BNSF.

8 8. On September 18, 2014, the EEOC issued a right-to-sue letter allowing a claim
9 to be filed in a United States District Court within 90 days.

10 **STATEMENT OF FACTS**

11 9. In June of 2006 plaintiff Kris Arthur, who at that time went by “Kris Koeberle”
12 and was a resident of the State of Washington, applied for an open position with defendant
13 BNSF.

14 10. On July 7, 2006, BNSF invited Arthur to interview for the Assistant
15 Signalperson position.

16 11. On July 15, 2006, Arthur was interviewed in Denver, Colorado, passed the pre-
17 employment aptitude test. and received a cumulative score of eighteen or higher on the
18 Structured Panel Interview.

19 12. On July 26, 2006, Arthur received a Conditional Offer of Employment from
20 BNSF for the Assistant Signalperson position in Douglas, Wyoming. The offer was contingent
21 on Arthur’s successfully passing a physical exam, which included hair analysis for drug
22 screening purposes, a urinalysis for drug screening, and the submission of a medical
23 questionnaire. Arthur also would undergo a background check which had to be favorable

1 before she would be hired. Arthur passed all of the drug tests, the physical and her background
2 check was positive.

3 13. On September 18, 2006, Arthur was evaluated by BNSF physicians who
4 concluded that she had no apparent functional limitations but had normal strength and all
5 sensory findings were normal.

6 14. On September 20, 2006, Arthur's primary care physician completed a medical
7 questionnaire on her and identified Arthur's current medications. Arthur's medical records
8 showed that she had sustained an industrial injury in November of 2003 and had a surgical
9 procedure on August 17, 2005 involving her right elbow. On September 28, 2006, BNSF's
10 medical director determined that Arthur was not medically qualified for the position of
11 Assistant Signaller due to a significant risk associated with a chronic condition in her right
12 arm. BNSF informed Arthur that she could contest this decision with medical evidence to the
13 contrary.

14 15. On October 3, 2006, Arthur's physical therapist notified BNSF that her grip
15 strength had returned to its original capacity and that Arthur was not limited by pain or strength
16 deficits and that she was now in fine condition.

17 16. On October 3, 2006, Arthur was notified by BNSF via email that she had been
18 qualified by their medical officer and she was to report to work on October 16, 2006.

19 17. Arthur then began making arrangements to move to Wyoming, rented a
20 residence south of Douglas, Wyoming and made arrangement for all of her belongings to be
21 shipped there.

18. On October 15, 2006, Arthur checked into the hotel in Alliance, Nebraska which BNSF had arranged. Her name was in the hotel registry and her room was fully pre-paid by BNSF.

19. On October 16, 2006, Arthur reported for her first day of training but was not allowed to participate in the classroom training and was told to leave. BNSF says that Arthur did not meet their medical standards.

20. Arthur was never allowed to return or work for defendant BNSF.

FIRST CLAIM FOR RELIEF

(Title I of the ADA, 42 U.S.C. §§ 12112(a) and 12112(b)(6))

21. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1 through ___ with the same force and effect as if such paragraphs were separately realleged in this 20 Claim for Relief.

22. Plaintiff was denied employment with defendant BNSF because it perceived her as having a disability in violation of the Americans with Disabilities Act.

23. As a proximate result of defendant's discriminatory action as alleged above, plaintiff has been harmed in that she suffered a loss of wages, salary, medical benefits, and additional amounts of money she would have received if defendants had allowed her to continue working, plus interest on each check plaintiff would have received.

24. As a result of such discrimination and consequent harm, plaintiff has suffered such damages in an amount according to proof at trial.

25. As a further proximate result of defendant's discriminatory actions as alleged above, plaintiff has been harmed in that she has suffered humiliation, mental anguish, anxiety, mortification, loss of good health and emotional and physical distress, and has been injured in

1 mind and body as follows: plaintiff sustained severe and continuing shock to her nervous
2 system, stomach and head pain and loss of sleep, all to her damage in an amount according to
3 proof at trial.

4 26. The above-cited actions of defendant were done with malice, fraud, and/or
5 oppression, and in reckless disregard of plaintiff's rights under the ADA. Defendant denied
6 plaintiff employment with knowledge that such treatment would cause hardship to plaintiff
7 and cause her to suffer emotional distress. An award of punitive damages is warranted.

8 **SECOND CLAIM FOR RELIEF**

9 (Violation of the ADEA)

10 27. Plaintiff incorporates by reference herein the allegations set forth in paragraphs
11 1 through 26 with the same force and effect as if such paragraphs were separately realleged in
12 this Second Claim for Relief.

13 28. Plaintiff was denied employment with defendant BNSF because of her age in
14 violation of the Age Discrimination in Employment Act.

15 29. As a proximate result of defendant's discriminatory actions as alleged above,
16 plaintiff has been harmed in that she has suffered a loss of wages, salary, medical benefits, and
17 additional amounts of money she would have received if she had not been denied employment
18 by defendant, plus interest on each check plaintiff would have received.

19 30. As a result of such discrimination and consequent harm, plaintiff has suffered
20 such damages in an amount according to proof at trial.

21 31. As a further proximate result of defendant's discriminatory action(s) against the
22 plaintiff, as alleged above, the plaintiff has been harmed in that the plaintiff has suffered
23 humiliation, mental anguish, anxiety, mortification, loss of good health and emotional and

1 physical distress, and has been injured in mind and body as follows: plaintiff sustained severe
2 and continuing shock to her nervous system, stomach and head pain and loss of sleep, all to
3 her damage in an amount according to proof at trial.

4 32. The above-cited actions of defendant were done with malice, fraud, and/or
5 oppression, and in reckless disregard of plaintiff's rights under the ADEA. Defendant denied
6 plaintiff employment with knowledge that such treatment would cause hardship to plaintiff
7 and cause her to suffer emotional distress. An award of punitive damages is warranted.

8 **THIRD CLAIM FOR RELIEF**

9 (Sex Discrimination Violation of Title VII)

10 33. Plaintiff incorporates by reference herein the allegations set forth in paragraphs
11 1 through 32 with the same force and effect as if such paragraphs were separately realleged in
12 this Third Claim for Relief.

13 34. Plaintiff was denied employment with defendant BNSF because of her sex,
14 female, in violation of Title VII, the Civil Rights Act of 1964 as amended.

15 35. As a proximate result of defendant's discriminatory actions as alleged above,
16 plaintiff has been harmed in that she has suffered a loss of wages, salary, medical benefits, and
17 additional amounts of money she would have received if she had been allowed to work, plus
18 interest on each check plaintiff would have received.

19 36. As a result of such discrimination and consequent harm, plaintiff has suffered
20 such damages in an amount according to proof at trial.

21 37. As a further proximate result of defendant's discriminatory actions as alleged
22 above, plaintiff has been harmed in that she has suffered humiliation, mental anguish, anxiety,
23 mortification, loss of good health and emotional and physical distress, and has been injured in

1 mind and body as follows: plaintiff sustained severe and continuing shock to her nervous
2 system, stomach and head pain and loss of sleep, all to her damage in an amount according to
3 proof at trial.

4 38. The above-cited actions of defendant were done with malice, fraud, and/or
5 oppression, and in reckless disregard of plaintiff's rights under the Title VII. Defendant denied
6 plaintiff employment with knowledge that such treatment would cause hardship to plaintiff
7 and cause her to suffer emotional distress. An award of punitive damages is warranted.

8 **PRAYER**

9 WHEREFORE, plaintiff respectfully prays that this Court enter judgment against
10 defendant, granting plaintiff:

11 A. A declaratory judgment that the acts, policies, and practices of defendant, as
12 complained of herein, violated the rights of plaintiff as secured by the laws;

13 B. Grant a permanent injunction enjoining defendant, its officers, agents,
14 successors, assigns, and all persons in active concert or participation with it, from unlawfully
15 failing to provide equal employment opportunities to applicants for employment and
16 employees with disabilities or perceived disabilities and to accommodate applicants' and
17 employees' disabilities, and any other employment practice which discriminates on the basis
18 of disability or perceived disability;

19 C. Order defendant to institute and carry out policies, practices, and programs
20 which provide equal employment opportunities for qualified individuals with disabilities, and
21 which eradicate the effects of its past and present unlawful employment practices;

22 D. Reinstatement or front pay;

23 E. Back pay;

1 F. Fringe benefits, including likely earned pension or retirement plan;

2 G. General damages according to proof at trial against defendant;

3 H. Punitive damages for malicious and reckless conduct;


4 I. Emotional distress damages to be determined at trial;

5 J. Prejudgment interest on all lost wages and benefits calculable to a reasonable
6 certainty; and

7 K. Plaintiff's costs of suit, including statutory attorney's fees, and for such further
8 relief as this Court deems appropriate.

9
10 DATED this 7th day of November, 2014.

11
12 PREMIER LAW GROUP, PLLC

13
14 

15 **Darryl Parker**, WSBA #30770

16 **Claire Lee**, WSBA #47390

17 Attorneys for Plaintiff

18 1408 140th Place NE

19 Bellevue, WA 98007

20 Telephone: 206-285-1743

21 Facsimile: 206-599-6316

22 dparker@plg-pllc.com

23 claire@plg-pllc.com